UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/75/Add.1
17 January 2002

Original: ENGLISH
ENGLISH AND SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Agenda item 11 (c) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report submitted by Mr. Abid Hussain, Special Rapporteur, in accordance with Commission on Human Rights resolution 2001/47

Addendum

Mission to Argentina

GE.02-10155 (E) 270301

CONTENTS

		Paragraphs	Page
Introduction		1 - 8	3
I.	GENERAL BACKGROUND AND CONTEXT	9 - 21	4
II.	LEGAL FRAMEWORK	22 - 41	6
	A. International obligations	23 - 24	6
	B. Regional obligations	25 - 27	7
	C. National legislation	28 - 41	7
III.	PRINCIPAL CONSIDERATIONS AND CONCERNS	42 - 161	9
	A. The media	43 - 78	10
	B. Other issues and concerns relevant to the promotion of and respect for the right to freedom of opinion and expression	79 - 140	15
	C. The state of freedom of opinion and expression in the provinces: the case of Santiago del Estero	141 - 161	24
IV.	CONCLUDING OBSERVATIONS	162 - 178	28
V.	RECOMMENDATIONS	179 - 190	31
Annex: List of persons the Special Rapporteur met during his visit			37

Introduction

1. This report has been prepared pursuant to resolution 2001/47 of the Commission on Human Rights. It presents and analyses information received by Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, before and during his visit to Argentina from 25 June to 2 July 2000, from individuals and non-governmental organizations concerning allegations of violations of the right to freedom of opinion and expression.

2. By letter dated 27 May 1998 addressed to the Permanent Mission of Argentina to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government to a visit to Argentina. The request was reiterated by the Special Rapporteur on 15 November 1999. On 30 March 2000, the Government of Argentina granted the request.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Argentina in discharging his mandate.

4. The Special Rapporteur would also like to thank sincerely the former Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States, Santiago Cantón, and his Office, for his cooperation, assistance and advice in the preparation of the mission to Argentina, the first undertaken to Latin America since his appointment as Special Rapporteur.

5. The Special Rapporteur would also like to express his appreciation to the United Nations Resident Coordinator and staff of the United Nations Development Programme (UNDP) as well as the United Nations Information Center (UNIC) in Buenos Aires for their efficient preparations and assistance prior to and during the visit.

6. The Special Rapporteur visited the federal capital, Buenos Aires, and the town of Santiago del Estero located in the northern part of the country. He met with the President of the Republic, government representatives, members of parliament and members of the judiciary, both at federal and provincial levels. He also had opportunities to talk with representatives of non-governmental organizations (NGOs) active in the field of human rights, academics, writers, media professionals, witnesses to and victims of alleged violations and other interested members of civil society.

7. The Special Rapporteur also participated in the closing ceremony of a training session organized by the Ministry of Justice entitled "Derechos y deberes de la profesión del periodista a la luz de los derechos humanos" ("Rights and duties of the professional journalist in the light of human rights"). At the end of his mission, the Special Rapporteur held a press conference at UNIC Buenos Aires.

8. Finally, the Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to Argentina, in particular those who provided him with reports and documentation. A list of persons he met during the visit appears in the annex.

I. GENERAL BACKGROUND AND CONTEXT

9. During the greater part of the twentieth century, the Government of Argentina, which established national unity and adopted a constitution in 1853, tended to alternate between military and civilian regimes. In 1983, Argentina returned to democracy after seven years of military rule. Eighteen years on, Argentina is still a society deeply marked by the military junta which ruled the country from 1976 to 1983. During that period, a tragic one in Argentine's history, thousands of people were abducted by the security forces, disappeared or went into exile. The Constitution was suspended in 1976 by the junta and replaced by the "Acta fijando el propósito y los objectivos basicos para el proceso de reorganization nacional" ("Act setting the basic goals and objectives of national reorganization"). All political and trade union activities were halted and the Congress (i.e. the Senate and Chamber of Deputies) was dissolved. The junta restricted and banned fundamental freedoms, including the freedom of opinion and expression. Media censorship was widespread and no political opposition was allowed.

10. The democratic regime of President Raúl Alfonsín, who was elected in October 1983, lifted the ban on political parties and restored other basic liberties suspended during military rule. In the search for the truth about human rights violations committed during the so-called "dirty war", the civilian Government set up the Comision Nacional sobre la Desaparición de Personas (National Commission on Disappeared Persons) (CONADEP). The Commission recorded 8,960 cases of disappearances but underlined that the true figure might be much higher. Disappearance cases included those of about 200 children, born in clandestine detention centres during the captivity of their mothers, some of whom are believed to have been taken away and given to childless couples close to the military. These cases were included in the 1984 report of the Commission, Nunca Mas (Never Again). The Commission also found that there were 340 secret detentions centres in Argentina and concluded that the armed forces had violated human rights in an organized manner by making use of the State apparatus.

11. Nine former military leaders were accused of human rights violations. Their trial began in April 1985. Several hundred prosecution witnesses gave testimonies which revealed a campaign of systematic atrocities perpetrated by the military regime. In December of the same year, four of the accused were acquitted but the remaining five were convicted. General Jorge Rafael Videla and Admiral Emilio Eduardo Massera[1] were sentenced to life imprisonment.

12. The investigations into past human rights violations committed during the "dirty war" were, however, brought to a standstill in 1986 following the adoption by the Congress of Law 23.492, the so-called Full Stop Law, which set deadlines for courts to complete the investigations. In addition, in 1987 Law 23.521, known as the Law of Due Obedience, instructed judges to apply the principle of due obedience to all officers below the rank of colonel and close any cases against them. This legislation provoked great controversy in Argentina, in particular among the relatives of the disappeared, as there are no longer legal means of bringing to justice those responsible for human rights abuses committed during the military rule.

13. The case of the mothers of victims needs to be looked into with much greater sympathy and understanding in Argentina. Organizations of mothers are working to locate the killers of their children and would like them to be brought to justice. "Truth trials" could be organized which could become the wellspring of patriotic feelings and provide a framework for preventing such adversity being faced by the community in the future.

14. In October 1989 and December 1990, the successor to President Alfonsín, Carlos Saúl Menen, who was elected in July 1989, pardoned high-ranking military officials implicated in human rights violations and convicted in 1985. Former high-ranking military rulers thus could only be accused of stealing babies.

15. An important step towards truth and justice was taken in March 2001 when Judge Gabriel Cavallo[2] ruled the Due Obedience and Full Stop Laws unconstitutional and void. However, their repeal has been interpreted as not being effective retroactively, so that cases of human rights violations committed during the military Governments continue to be covered by them.

16. In 1983, Argentina returned to the principles of the 1853 Constitution, which established a federal system. Administratively, the country consists of a Federal District and 23 provinces. However, it is worth noting the words of Félix Luna, a prominent Argentine historian and journalist, who stated that "Argentina is a federal country both by constitution and vocation yet its geographical arrangement condemns it to centralism and to dependence on Buenos Aires".[3] In 1994 a major constitutional reform took place: 19 new articles were included and 40 existing articles amended. Furthermore, a chapter on "New Rights and Guarantees" was added. The 1994 Constitution establishes a separate executive and bicameral legislature and an independent judiciary.

17. During the past 18 years, important steps have also been taken to set up, generally by decree, governmental structures and institutions aimed at dealing with human rights issues.

18. Besides the constitutional reform, the restoration of democracy has also permitted the plurality of voices and freedom of press to be restored. The independent press which was silenced by the military regime as well as human rights NGOs, the Asociación Madres de la Plaza de Mayo in particular, played a crucial role in denouncing human rights violations. According to a public opinion poll conducted in March 2001 in Buenos Aires Federal Capital District and Buenos Aires Province, the media, along with the Church, are the institutions with the best image, in particular among the youth.

19. However, in spite of the return to democracy, death threats, physical attacks and other forms of intimidation against journalists have been reported. The pressure on the media was intense, in particular during the early 1990s. Between 1993 and 1999, three journalists[4] were killed and several hundred harassed, prosecuted and threatened with lawsuits mainly on defamation charges. The majority of attacks against journalists were motivated by their investigations into corruption involving criticism of authorities. In several cases the involvement or acquiescence of members of the police and other security services was alleged. In spite of the fact that in some cases official complaints have been filed with the relevant authorities, inquiries have been initiated in only a few cases and many have remained unclarified.

20. At the beginning of this new century, Argentina is facing very severe economic and social problems. Following several years of economic growth as a result of economic reform and a structural adjustment programme, which included privatization and trade and financial sector liberalization, the economy slowed down in 1998 and in 1999 entered into recession. The unemployment rate is more than 15 per cent. The large numbers of under- and unemployed workers have given rise to frequent demonstrations, some of which were broken up with violence.

21. The present Government is more concerned with the needs of the people but is unable to devise an innovative socio-economic system which would meet the requirements of the people. The economic policies are slow in formulation and halting in implementation. Though the Government is trying to reach out to the people a coherent strategy is lacking. Lack of resources for socio-economic activities can to some extent explain the economic slowdown, but the art of policy-making is to identify a range of effective alternatives and mobilize people's support to implement them. The State is required to play a much more aggressive role in this respect. Privatization has not solved the problem and there is resentment against the joblessness which privatization has created. There are also voices heard against the World Trade Organization. Since globalization is inescapable, leadership should seek to transform people's reactions towards it through a process of public education. President de la Rua is respected and people are looking to him for more progressive laws to be enacted by the State. Jobs and security will have the inevitable consequence of strengthening the forces of human rights. The two strengthen each other. From reforms forces of human rights derive their appeal.

II. LEGAL FRAMEWORK

22. In this section, the Special Rapporteur will briefly consider some aspects of the international, regional and national legal frameworks governing the protection of the right to freedom of opinion and expression in Argentina. He will conclude with a brief presentation of the judicial system.

A. International obligations

23. Argentina is a Member State of the United Nations and is thus bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights, article 19 of which enshrines the right to freedom of opinion and expression.

24. Argentina has also accepted a wide range of international obligations in the field of human rights, notably those contained in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

B. Regional obligations

25. Argentina, furthermore, is a founding member of the Organization of American States (OAS), which was established in 1948. Argentina has ratified the American Convention on Human Rights (Pact of San José) which guarantees in its article 13 the freedom of thought and expression.

26. It is to be noted that article 44 of the American Convention provides that any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization, may lodge petitions with the Inter-American Commission on Human Rights (IACHR) containing denunciations or complaints of violation of this Convention by a State party.[5]

27. In October 1997, the IACHR created the mandate of a Special Rapporteur for Freedom of Expression. His mandate derives from article 13 of the American Convention. This mechanism is extremely important as it not only covers immediate notification to the Commission of serious cases of violations of the right to freedom of opinion and expression, but also provides for advocacy and technical assistance projects. One of the most significant achievements of the Special Rapporteur has certainly been the drafting and the development of the Inter-American Declaration of Principles on Freedom of Opinion and Expression, which was adopted by the IACHR at its one hundred and eighth regular session in October 2000. The Declaration comprises 13 principles covering key issues such as the right to access information, defamation laws and confidentiality of sources.

C. National legislation

1. The Constitution

28. The Constitution was adopted at Santa Fé on 1 May 1853. The text was amended in 1860, 1866, 1898 and 1957. On 22 August 1994, the National Constituent Convention approved amendments to the Constitution which came into effect on 24 August 1994.[6] Indeed, article 32 states that "[t]he Federal Congress shall not enact laws restricting the freedom of printing or establishing federal jurisdiction over it". In addition, article 14[7] of the 1994 Constitution provides for the right to freedom of opinion and expression and article 43, paragraph 3, states "the secret nature of journalistic information shall not be impaired".

29. It is also important to underline that the 1994 Constitution provides in its article 75 (22) that treaties and concordats have a higher hierarchy than laws and that the instruments list above to which Argentina is party have constitutional hierarchy, and are to be understood as complementing the rights and guarantees recognized in the Constitution.

2. Legislation on the media

30. There are no legal norms that specifically regulate the activities of the print media. However, with reference to television and radio, the Federal Committee on Radio Broadcasting (COMFER) is the authority in charge of applying the 1981 Law on Radio

Broadcasting 22,285 and its regulating decree. In principle, COMFER can order the immediate and pre-emptive suspension for 48 hours of any broadcast which violate the Law or its regulations. A court may order suspension for a maximum of 10 days without affecting the due course of the process to determine criminal responsibility.

31. Law 22,285, which was enacted by the last military regime, is a product of the security concerns which dominated that Government. On 14 March 2001, the President transmitted to the parliament a draft bill on the subject, which will be explained more comprehensively below, with a view to adapting the law to the new situation of democracy.

3. Other laws and institutions with a direct impact on the exercise of the right to freedom of opinion and expression

(a) Libel and slander

32. Offences relating to libel and slander are included both in the Penal and the Civil Code of Argentina.

33. The offences of libel and slander are contained in the 1992 Penal Code, in articles 109 to 117. Articles 111 and 113 deal specifically with the crimes of slander and libel against a public official and figures. Furthermore, article 111 provides that a person accused of libel is required to prove the truth of the accusation only in the following cases: (a) if the purpose of the accusation was to defend or guarantee a matter of current public interest; (b) if the act attributed to the person allegedly libelled led to criminal prosecution; (c) if the plaintiff requested proof of the accusation. If the truth of the accusations can be proved in these cases, the accused is exempt from punishment. Furthermore article 113 states that anyone who publishes or reproduces, by any means, defamatory statements made by another shall be punished as the author of the libel or slander.

34. The Civil Code in its article 1089 deals with defamation, libel and slander. It states that if a violation of law is any type of slander or libel, the offended party shall only have the right to demand monetary compensation if he is able to prove that the slander or libel caused actual damage or the loss of an appreciable amount of money, and as long as the guilty party does not prove the truth of the accusation.

(b) Right to assembly

35. Article 14 bis of the Constitution guarantees the right to organize free and democratic trade union organizations subject only to registration. Article 4 (b) of Act No. 23,551 recognizes the right of workers to join, not to join or to leave existing associations.[8] The right to create political parties in conformity with democratic principles is also guaranteed. The Constitution also provides for the freedom to hold peaceful meetings and to participate in peaceful meetings. The right to strike is also guaranteed.

(c) Institutions aimed at promoting and protecting human rights and the right to freedom of opinion and expression

36. Since the restoration of democracy in 1993, several such institutions have been set up. Among them are: the Office of the Under-Secretary for Human Rights at the International Level (Decree No. 932 of 11 June 1986) within the Ministry for Foreign Affairs, International Trade and Worship, and the National Institute to Combat Discrimination, Xenophobia and Racism (Act No. 24,515 adopted in 1995 by the Congress).

37. In addition, special forums with competence in the field of human rights have been established within the Congress. Thus, there are Commissions on Human Rights and Guarantees in both the Senate and the Chamber of Deputies, established in 1983 and 1992 respectively, and also the Freedom of Expression Commission of the Senate. In December 1993, the Congress adopted Act No. 24,284 establishing the Defensor del Pueblo (Ombudsman).

4. The judicial system

38. The 1994 Constitution provides for an independent judiciary. Judicial power in Argentina is exercised by the Supreme Court of Justice and other courts established by Congress within the national territory (Constitution, art. 108). In no circumstances may the President exercise judicial functions, assume jurisdiction over pending cases or reopen cases that have been closed (art. 109). The judicial system is divided into federal and provincial courts, each headed by a supreme court with chambers of appeal and section courts below it.

39. Prior to 1994 reforms, judges were appointed by the executive with the approval of the Senate. Following the 1994 constitutional reform, appointments will be based on a binding list of three candidates proposed by the Council of the Magistrature (art. 114). This Council will be reconstituted periodically in such a way as to achieve balanced representation of the political bodies resulting from the popular election, from among judges of all the courts, lawyers on the federal register, and other persons from academic and scientific fields; the size and structure of the Council is spelled out in the special law establishing it.

40. It is the responsibility of the Federal Supreme Court and the lower courts to hear and decide all cases relating to matters governed by the Constitution, the laws of the nation or treaties with foreign nations. The Supreme Court exercises jurisdiction over appeals in accordance with the rules and exceptions prescribed by Congress.

41. It has been brought to the attention of the Special Rapporteur that the Supreme Court, at its own discretion and solely on the basis of article 280 of the Code of Civil Procedure, can dismiss an extraordinary appeal on the grounds that there has been no violation of federal norms, or when the issue before the Court is without substance or irrelevant.

III. PRINCIPAL CONSIDERATIONS AND CONCERNS

42. In order to assess the situation of the right to freedom of opinion and expression in Argentina, the Special Rapporteur met with a large number of government officials, media professionals, writers, academics, lawyers, human rights organizations and members of journalists' associations and trade unions.

A. The media

43. The Special Rapporteur will first provide the historical background of the media. He will then look at the structure and principal characteristics of the media and examine the reform of the broadcast media. He will conclude by identifying the principal characteristics of the violations of the freedom of the press in order to identify trends and patterns.

1. Historical background

44. The Special Rapporteur was informed that the expansion of the print media began towards the end of the nineteenth century as a result of economic growth and a wave of immigration originating mainly from the European[9] continent.

45. The first national newspaper in Argentina, La Nación, was founded in 1870 and at the end of the nineteenth century more than 100 provincial newspapers were established. Their circulation was high, for example, La Prensa, established in 1880, sold more than 1.5 million copies in 1914. The fast and widespread growth of the print media continued during the first half of the twentieth century. According to information received by the Special Rapporteur, in 1950, among the seven national dailies published in Argentina, three had a circulation exceeding 150,000 copies. The high level of literacy among the population resulting from the establishment of free and obligatory education in 1888 and the emergence of an important middle class also played a major role in the development of the print media.

46. The worldwide media boom in the 1990s had a strong impact on the situation of the media in Argentina. Mergers and acquisitions introduced the concept of multimedia information. A lot of medium and small media holdings were absorbed.

2. Structure and characteristics of the media

(a) The print media

47. According to information made available to the Special Rapporteur, Argentine newspapers are in general either national or provincial. At present, there are more than 230 newspapers: 15 are dailies produced in Buenos Aires with national distribution; 77 are provincial dailies printed and distributed in the Province of Buenos Aires, which is the largest province of the Republic; and 134 are provincial or local dailies published and distributed locally.

48. About 25 papers have a circulation of over 10,000. The three main national dailies are Clarín (with a daily circulation of 500,000 copies and more than 1 million on Sunday, it is the largest newspaper in the Spanish-speaking world), La Nación (250,000) and Página 12 (80,000). Many Argentine newspapers and magazines are also available on the Internet.

49. Coverage in dailies focuses on Argentina's domestic politics. The largest national dailies devote 10-15 per cent of space to international coverage, with the exception of the national English-language daily, The Buenos Aires Herald, which usually devotes only 5 per cent of its

pages to international news. It is to be noted that Latin American news predominates in the international affairs section in the largest provincial dailies with international affairs sections. International newspapers in English, Spanish and German are also available.

50. Furthermore, the attention of the Special Rapporteurs was drawn to the large number of magazines, newsletters and pamphlets produced by political parties, trade unions, NGOs and specific communities. According to the information received, the print media in Argentina are ideologically wide-ranging and cover the entire country.

(b) The broadcast media

51. The end of the government monopoly of the electronic media in 1986 has opened up the airwaves to a greater and broader variety of programmes. According to the Argentine Television Broadcasters Association (ATA), there are 44 open television channels in Argentina. Twenty-nine are private stations while others are public national and provincial television channels.

52. There are no official data provided by the Argentine Cable Television Association (ATVC), on the number of cable television stations (access by subscription) in Argentina. However, according to unofficial sources, between 20 and 25 stations are daily airing in Argentina.

53. Over the last decade, cable and satellite television have increased impressively. It is estimated that about 28 million out of a total population of 36 million people are now linked to cable TV.

54. As in other countries, media conglomerates have great influence. The Grupo Clarín, which publishes the national daily Clarín is Argentina's largest multimedia group. Téléfonica Media is the second with two open television channels in Buenos Aires. The majority of them are privately owned with an increasingly prominent role being played by foreign investors.

55. With regard to the public sector, the Special Rapporteur has been informed that in April 2001 a public media holding company was set up, Canal 7, comprising a television station, the national radio and a news agency, Telem. The Special Rapporteur was informed that the company is administered by a board of three directors, all designated by the executive branch of Government (one by the Secretary-General of the Presidency, one by the Ministry of Economy and one by the Ministry of Culture). The members of the board explained that education is the main purpose of this company. Specific programmes for religious and ethnic minorities are also broadcast. It has also been reported that a few provincial governments also own broadcast media outlets.

56. According to the Argentine Private Broadcasters Association (ARPA), there are no official data on the number of radio stations in Argentina but it is estimated that there were about 6,000 stations countrywide, including FM, AM and community stations.

(c) The Internet

57. As far as the development of the Internet in Argentina is concerned, the Special Rapporteur was told during his meetings with media professionals that no interference or control by governmental authorities is exercised. The Special Rapporteur was informed that in the last three years the Internet has become well developed, in both the public and private spheres. He noted with great satisfaction that the public can easily have access to the Internet and many Internet cafés were established. The prices seem to be affordable.

3. Reform of the broadcast media

58. The Special Rapporteur has been informed that on 14 March 2001, the President transmitted to the Congress a draft bill proposing a reform of the 1981 broadcasting law. The Special Rapporteur's attention was drawn to the fact that the current law to be amended was drafted in conformity with the document of the military junta dated 20 September 1977 establishing the objectives, strategies and rules to be applied to broadcasting services or agencies based on the 24 March 1976 Act establishing the basic purposes and objectives of the national reorganization process.

59. Representatives of the Government, academics, journalists and trade unions have been consulted since March 2000 on the reform process. A main aspect of the bill is that it would allow groups of broadcasting organizations to obtain regional or national licences. In addition, the draft bill establishes rules and regulations for radio and television programming.

60. The bill also introduces a system of air-time allocation to certain interest groups, and the classification of programmes. Furthermore, the bill creates a sort of consumer advocate for users of the broadcast services. This person acts as a mediator between COMFER and its customers, receiving complaints, keeping track of the cases submitted and informing the competent authorities about the functioning of the communication sectors. While the current law provides that licences can be granted only to physical or legal persons and the national, provincial and municipal governments, the bill would allow cooperatives, universities and Churches to be granted licences.

61. The Special Rapporteur is satisfied with the contents of the bill and welcomes the fact that the process of preparing it has been participatory and has involved the major concerned actors. He welcomes the fact that the new law will enable licences to be granted to universities, Churches and cooperatives.

62. The Special Rapporteur has also noted with great interest the launching of a joint COMFER-Ministry of Education project aimed at establishing radio stations in rural and border areas.

4. Principal characteristics of the violations of freedom of the press: patterns and trends

63. During his mission, the Special Rapporteur noted that the freedom of the press is, by and large, respected. It is very encouraging that almost all the persons he consulted - writers of great

eminence, journalists of high political standing, outstanding citizens and Noble Prize winners - were unanimous in the view that Argentina now enjoys a high level of freedom and respect for human rights. There are no complaints of governmental intervention in the right of authors to express their views and opinions through writings in the press or in books on any subject of their choice. Censorship is not exercised by the State nor newspapers closed down, nor even warnings given to curtail the freedom to write. Even cartoons and critical writing about the highest authorities of the State find expression in the media. But it might be mentioned that any criticism of the Church is not welcome.

64. Despite this positive evolution, the Special Rapporteur was informed of a number of cases of violations of the freedom of the press. According to the annual report of the non-governmental organization Peridistas,[10] during the year 2000 some 130 violations were registered, a 10 per cent reduction as compared with 1999. This trend results primarily from a decrease in the number of cases of verbal attacks by governmental officials against journalists and of physical assaults against both persons and property. According to the Special Rapporteur's interlocutors, many such cases occurred in the provinces.

65. Besides cases of legal action for defamation brought against journalists, which will be examined in a specific section of this report, the Special Rapporteur was informed by certain NGOs during his mission that the press was not totally exempt from intimidation and threats. Indeed, the cases included in the communications[11] transmitted by the Special Rapporteur to the Government concerned cases of: (a) threats and use of violence (Hernán López Echagüe, Marcello Bonelli and Santo Biasatti in 1993); (b) death threats, attacks and harassment of journalists (Ariel Garbarz, Magdalena Ruiz Guiñazú and Antonio Fernández Llorente in 1997); and (c) intimidation of a journalist affiliated with a media trade union (Ms. A.M. Careaga in 1998). In these cases, it alleged that the authors were officials, including police.

66. The Special Rapporteur, while noting with great satisfaction that no case of assassination has taken place since 1999, was informed that the investigations into previous murders[12] have yet to be completed. In this regard, the Special Rapporteur sent a communication on 27 May 2001 to the Government[13] regarding the widely known cases of José Luis Cabezas and Mario Bonino, murdered in January 1997 and November 1993, respectively. He was equally concerned that the investigation into the murder of Ricardo Gangene[14] has not made significant progress. With regard to these murders, the Special Rapporteur is concerned by the slowness of the judiciary and that the investigations appear not to have been thorough.

67. Concerning the case of José Luis Cabezas, the Special Rapporteur, while expressing satisfaction that the perpetrators have been identified and tried,[15] reports that some aspects of the investigation need to be clarified. In this connection, he strongly encourages the independent commission set up to continue the investigation into the unclear aspects of this case to produce its conclusions as soon as possible. The Special Rapporteur is also concerned about the threats and legal actions against the lawyer of the Cabezas family. According to the information provided, the lawyer has been suspended from the Bar for several years. In light of the seriousness of the situation of the case, the Special Rapporteur has transmitted it to his colleague, the Special Rapporteur on the independence of judges and lawyers, for follow-up.

68. The Special Rapporteur has been informed of other cases of attacks, insults, intimidation and legal actions, both in Buenos Aires and in the provinces, during the past two years to which he would like to draw the attention of the authorities.

69. It is reported that on 29 March 2000, unidentified persons fired at the home of Bernardo García Hamilton, a member of the board of directors of the newspaper La Gaceta de Tucumán. The family was asleep at the time. It is believed that this incident is related to the investigation into cases of corruption conducted by La Gaceta.

70. Photojournalist Rolando Andrade, of the daily La Nación, was attacked on 6 April 2001, allegedly by two bodyguards of Miguel Etchecolatz, Buenos Aires police chief during the last dictatorship. The assault allegedly occurred while Mr. Andrade was covering a public proceeding against Mr. Etchecolatz for public intimidation.[16]

71. On 29 March 2000, journalist Luis Giménez of the Telam news agency received a telephone threat from a person who reportedly said: "You're going to be another Cabezas." Mr. Giménez said that he had received telephone threats before.

72. It is also reported that Jorge Larrosa, a photographer for the newspaper Página 12, began to receive anonymous telephone threats in August 2000, three days after his work was introduced in court as evidence against a local policeman. An unidentified man called the Página 12 newsroom and told a receptionist, "Tell the photographer to be careful." Some days later, another anonymous caller phoned Página 12 and told fellow journalists, "That meddling photographer is a dead man." It is believed that the threats were related to coverage by Página 12 of a botched 1999 police operation known as "the massacre of Villa Ramallo", in which police were accused of colluding with thieves who took a group of persons hostage in the course of a bank robbery in the town of Villa Ramallo, Buenos Aires Province.[17] The journalist filed a complaint with a local court.

73. The Special Rapporteur was also informed of several cases of intimidation. On 4 January 2000, the Minister of Security of Buenos Aires Province, Aldo Rico, threatened and insulted a group of photographers who were covering his visit to Pinamar. Angered by the presence of the photographers, the official accused them of printing "lies and hypocrisy" and threatened to send the police "to chase them". A few days later, he publicly apologized.

74. The Special Rapporteur received also information about cases of intimidation which occurred outside Buenos Aires. He will not make reference to cases in Santiago del Estero as a section concerning this province is included in this report.

75. Eduardo Delbono, owner of and reporter for the radio station Ciudad de Merlo, filed a complaint with the prosecutor's office after reportedly receiving a death threat from two individuals on 20 November 2000. It is reported that one said, "Son of a thousand bitches, you better stop getting mixed up with the municipality or else you are going to show up by the Reconquista river. You will not be the first nor the last in Merlo." The journalist attributed the threat to the station's refusal to honour a request from the city that it not air calls from some listeners who criticized the Merlo city government.

76. It was reported that on 10 November 2000, an adviser to the Governor of San Luis Province threatened two journalists, Oscar Ángel Flores, head of news programming and host of two daily programmes on Radio Dimensión, and correspondent for the daily Clarín, and Mario Otero, host of two programmes on San Luis University FM Radio and publisher of the biweekly El Decamerón. The journalists were blamed for questions asked during a press conference with the Governor concerning a case of corruption that involved individuals who were said to be close to him. The Adviser to the Governor told the journalists, "What happened before is going to happen to you", reportedly a reference to the restrictions and intimidation that media in San Luis had been subjected to in past years.

77. The Special Rapporteur was informed that in the Tucumán Province, on 28 May 2000, a group of armed individuals attacked distribution centres for the newspaper La Gaceta. The assailants broke down the doors, seized copies of the paper and burned them in the street. The attack is presumed to be a result of the newspaper's conflicts with the union of newspaper and magazine vendors. As a result of the attack, several people were injured and vehicles were damaged.

78. Finally, the Special Rapporteur has been informed that more recently, in May 2001, the High Court of Neuquén Province took a decision to request the local Bar Association to impose sanctions against Mariano Mansilla,[18] allegedly in retaliation for exercising his right to express his opinion in human rights cases which he had defended. It has been reported to the Special Rapporteur that harassment of Mr. Mansilla started the day after his return from Geneva where he attended the fifty-seventh session of the Commission on Human Rights, together with his colleague, Matías Cremonte. On his return, he gave an interview to the newspaper La Manana del Sur in which he expressed his opinion on the cases he was handling and was critical of the attitude of the Government and of certain of the Neuquén judicial authorities. These sanctions will effectively put him at risk of forfeiting the right to exercise his profession.

B. Other issues and concerns relevant to the promotion of and respect for the right to freedom of opinion and expression

79. The Special Rapporteur will examine in this section other issues that have an impact on the right to freedom of opinion and expression. After a review of cases involving allegations of defamation (contempt), one of the main restrictions on the right of freedom of opinion, the Special Rapporteur will examine the issues of the public image of the President, the right to reply, habeas data and access to information. He will conclude with particular issues that deserve attention such as the freedom of opinion of minorities, the conditions of work in the media sector, and demonstrations.

1. Defamation: the main restriction on the right of freedom of opinion and expression

80. It was reported to the Special Rapporteur that criminal libel and slander and contempt, also known in Latin America as desacato laws, constitute one of the main restrictions on the right to freedom of opinion and expression in Argentina. The OAS Special Rapporteur also considers that this is one of the major problems in Argentina.[19] It was brought to the attention of the Special Rapporteur that during the rule of former president Carlos Menem many journalists were prosecuted for defamation.[20] [21]

81. The Special Rapporteur would like to refer to his previous reports (E/CN.4/2000/63, paras. 45-52 and E/CN.4/2001/64, paras. 43-47), in which he examines and analyses the issue of defamation and criminal libel. He would like also to make reference to the joint statements he made with the OSCE Special Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe and the OAS Special Rapporteur for Freedom of Expression in November 1999 and 2000 on the issue of defamation law contained in those reports.

82. According to the media, professionals who met the Special Rapporteur, the risk of legal action can discourage some of them from reporting on issues that might be sensitive despite the fact that they are of public interest.

83. In his report E/CN.4/1999/64 (para. 24), the Special Rapporteur expressed his concern that in a number of instances libel and defamation suits or even threats of such suits has had or has potentially had a direct and negative impact on freedom of opinion, access to information and the free exchange of ideas. In his view, this effect, often described as "libel chill", can create a climate of fear in which writers, editors and publishers become increasingly reluctant to report and publish matters of great public interest, not only because of the large awards granted in these cases but also because of the often ruinous costs of defending such actions.

84. Before his mission, the Special Rapporteur was informed by the Office of the OAS Special Rapporteur[22] of the case of Eduardo Kimel, for whom he publicly expressed concern after the journalist was convicted. The Special Rapporteur met with Mr. Kimel during the mission in order to follow up on this case, which started some 10 years ago.

85. In 1989, Mr. Kimel, published a book entitled La Masacre de San Patricio, which recounted how priests ("los Padres Pallotinos") had been killed during the 1976-1983 military dictatorship. Mr. Kimel argued that the action of the judges during the dictatorship was, in general, one of deference to, when not complicit with, the repression of the dictatorship. On 28 October 1991, former judge Guillermo Federico Rivarola, who was in charge of the investigation of the Padres Pallotinos case, brought a legal action against Eduardo Kimel for defamation based on article 109 of the Penal Code. In March 1992, there was a hearing during which no agreement could be reached between the two parties. On 25 September 1995, the Criminal Court of First Instance found Eduardo Kimel guilty and sentenced him to one year in prison and to pay damages of 20,000 pesos (US$ 20,000). On 19 November 1996, the Court of Appeal overturned the judgement and ruled that the opinions expressed by Mr. Kimel did not constitute an insult against Judge Rivarola. The Court considered that the journalist was exercising his right to inform and had had no intention of offending the judge. Judge Rivarola appealed to the Supreme Court, which overruled the Court of Appeal on 22 December 1998 on the ground that its ruling was not based on new facts. The case was sent back to the Court of Appeal which on 17 March 1999 confirmed the sentence of the first instance court. Consequently, the journalist filed an extraordinary appeal with the Supreme Court. Based on article 280 of the Code of Civil Procedure, the Supreme Court rejected that appeal on 14 September 2000 and notified the complainant on 19 September of its final decision. On 6 December 2000 the case was submitted to the Inter-American Commission on Human Rights, which considered it admissible and decided in February 2001 to include it with the Verbistsky, Sanz and Acher cases that were the subject of a "friendly agreement" process with the Government (see below).

86. Another case brought to the attention of the Special Rapporteur is that of television journalist Bernardo Neustadt who was found guilty of defamation based on remarks about a local judge that a guest had made on his talk show, "Tiempo Nuevo". On 9 February 1999, the Buenos Aires Civil Court of Appeals upheld a lower court's judgement against Mr. Neustadt, his television station, Telefé, and the offending guest and imposed a fine of 80,000 pesos (US$ 80,000).

87. One of the Special Rapporteur's objectives during his visit was to observe the status of the bill aimed at the decriminalization of slander and libel and the steps taken by the Government to implement the "friendly agreement" between the Government and the Inter-American Commission.

88. In 1999, former President Carlos Menem filed criminal charges against well-known journalist Horacio Verbitsky for contempt. The NGO Periodistas, of which Mr. Verbitsky is secretary-general,[23] appealed to the Inter-American Commission on Human Rights, which ruled in his favour. Following the petition filed by Periodistas, the Government agreed to a friendly settlement and to repeal its desacato laws. In December 1999, the Congress was asked to consider the bill immediately. The first hearing was held in the Senate the same month, but the bill stalled after a number of representatives expressed reservations.

89. The purpose of this draft law, which was developed by Periodistas, is to modify the provisions of the national civil and criminal codes related to the crimes of slander and libel in order to comply with the principles protecting the right to freedom of opinion and expression contained in the Constitution and in international treaties. The bill eliminates criminal defamation in the case of public figures, thereby complying with the Inter-American Declaration of Principles on Freedom of Expression.[24] It also introduces standards for determining "actual malice".

90. The doctrine of actual malice applies to the assumption of incorrect information by the informant, which does not result in the liability of the informant unless it is proven that in providing the false information, the person acted with criminal intent or in gross fault. Under the current Inter-American doctrine and practice, first articulated by the Supreme Court of the United States of America in The New York Times Co. v. Sullivan in 1964, the plaintiffs must prove not only that the information published is false, but also that the journalists knew, or should have known, that the information was false.

91. The bill proposes that four new paragraphs be added to article 1089 of the Civil Code pertaining to defamation, libel and slander. The first two (new paragraphs 2 and 3), contain the rules pertaining to false or incorrect information which, in the event actual malice is proven, provide for redress or reparations. The third (new paragraph 4) excludes liability in the case of value judgements of any kind. The fourth (new paragraph 5) provides for separate treatment for cases involving the faithful reproduction of information from another source in which the source is exempt from any civil liability, when the source is given.

92. Although the new law would apply only to cases in which public figures are involved, it is the view of the Special Rapporteur that it will provide more protection for journalists.

93. With regard to criminal law, it is proposed that cases related to criticism in the exercise of freedom of opinion would be excluded from criminal liability. To this end, the present article 111 of the Criminal Code would be deleted, as it is incompatible with the constitutional principles on the subject. The new text establishes immunity in the case of information, value judgements and humorous expressions published by the media on topics of public interest referring to public officials or similar persons. In addition, a new text was drafted to replace the present article 113 of the Criminal Code.

94. The Special Rapporteur inquired during his several meetings with authorities about the status of the bill and the action that the Government envisaged in order to comply with the "friendly agreement" with the IACHR. It was explained that, as one year had passed, the bill can be examined by the Congress only if it is introduced again. The Special Rapporteur was informed on the last day of his mission that the Department of Human Rights of the Ministry for Foreign Affairs had transmitted the bill to the President, strongly supporting its reintroduction in Congress. The Special Rapporteur was informed that on 11 July 2001, with reference to the Verbitsky case, the Director of the Human Rights Department informed the Executive Secretary of the IACHR that the Government would send the bill to the Chamber of Deputies of the Congress.

95. The Special Rapporteur welcomes this decision. He would like to refer to his report E/CN.4/1999/64 (para. 26) in which he underlines that "international case law in the area of libel and defamation has consistently found in favour of disclosure and public criticism of public figures, when warranted".

2. The issue of whether the public image of the President was being damaged by the humourists

96. One issue related to defamation is the public image of the President and the way that the humourists deal with it. There is no specific regulation on that issue. The Special Rapporteur was informed that in 2000, Senator Augusto Alasino transmitted a proposal for a bill to the Commission on Freedom of Opinion of the Senate, to curtail "the unlimited use of freedom of expression". The proposal was not examined.

97. During his mission, there was a debate on the issue of whether the image of the President was being damaged by humourists. The Special Rapporteur met with one of the famous humourists, NIK, whose cartoons, including caricatures of the President, are published daily in the newspaper La Nación. The Special Rapporteur was informed that some authorities suggested that the image of the President must be protected by law.

98. The Special Rapporteur stressed that humour should not in any case lead to indignity. He is of the view that it should be restrained by self-regulation and the limits of good taste, not by law. In this connection, the Special Rapporteur welcomes and praises the President for not having taken any of the authors of the satirical depictions of them to court.

3. Right of reply

99. The issue of the right of reply was discussed by the Special Rapporteur with several of his interlocutors during his mission.

100. While there is no mention of the right of reply in the Constitution, article 14 of the American Convention on Human Rights provides:

> "1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
>
> "2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
>
> "3. For the effective protection of honour and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges."

101. While Argentine law does not specifically recognize the "right to reply", the Special Rapporteur has been informed that courts have the authority to compel news outlets to publish statements from individuals who feel that they have been maligned, even in instances where the accuracy of the news report has not been called into question.[25]

102. From the discussions he held with media professionals, as well as with representatives of NGOs and government officials, different - in some instances opposite - points of view were expressed. While the majority of journalists and media owners appear not to be in favour of a systematic right to reply, NGO representatives as well as some government officials underlined that it was sometimes important in order to correct damage.

103. The Special Rapporteur strongly encourages public debate on this specific issue. However, he is of the view that in order to comply with article 14 of the American Convention, if a right-to-reply system is to exist, it should ideally be part of the media industry's self-regulatory system, and can only feasibly apply to facts and not in any case to opinions.

4. Habeas data and access to information

104. Along with the OAS Special Rapporteur for Freedom of Expression, the Special Rapporteur considers that the right to access information held by the Government (public information) and habeas data are clearly related to the right to freedom of information. While the two are similar, the information to which they grant access serves a clearly different function. The information in the first case is public in nature, and the right to that information is governed by the need to make a democratic system work better and to scrutinize (i.e. make accountable) Government. Habeas data, however, provides the opportunity to request information kept in both government databanks and private databanks.[26]

(a) Habeas data

105. In Argentina, article 43, paragraph 3, of the Constitution recognizes habeas data. The Special Rapporteur has been informed that habeas data is regulated by Law 25,326 (Ley de Protecion de los Datos Personales) of 4 October 2000.

(b) Access to information

106. The right to access information is not mentioned as such in the 1994 Constitution. The right to access to information is, however, recognized in the constitutions of the Provinces of Buenos Aires (art. 28) and Chubut (art. 13). This right is regulated by Law 3,764 and Law 104,[27] respectively.

107. The Special Rapporteur was told by the Minister of Justice that his Office was currently in the final stages of preparing a bill on the right to information. He said that a bill was needed in order to comply with the internationally recognized principles of publicizing government acts, that freedom of access to information is a prerequisite for democratic participation, that freedom of information is part of the freedom of expression, and that free access to public information creates transparency in government practices and projects a better image of the public institutions.

108. The draft bill has 13 articles. Article 3 deals with the types of information that the central administration is bound to provide: written documents, photographs, recordings, magnetic and digital formats, as well as any other forms of existing information provided to the administration. Furthermore, the draft bill regards as information material any type of documents financed by the national budget which could serve as a basis for any decision of an administrative nature, as well as the minutes of any official meetings.

109. According to article 4, the administration has 10 days to respond to any request submitted. This period could be exceptionally extended for another 10 days if there are difficulties in providing the required information. It is specified in article 6 that no answer from the administration will be considered as a negative answer. The administration is, however, exempted (art. 10) from complying with article 6 with respect to information classified as confidential for security and political reasons or when such information could endanger the proper functioning of financial system.

110. The Special Rapporteur wishes to recall that under international human rights law, the right to freedom of information can be restricted only in the most serious cases of threats to national security, and to refer in this regard to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (E/CN.4/1996/39, annex), which offer some guidance on this matter.

111. The Special Rapporteur welcomes the initiative to introduce a law on access to information and the fact that the drafting process was participatory. The Special Rapporteur believes that a law on access to information plays an extremely important role in a democratic society in general, and in particular in a country like Argentina which has to deal with the legacy

of military dictatorship and with the human rights violations committed during that period. The Special Rapporteur hopes that the draft bill will be introduced as soon as possible and, after debate, be enacted. The Special Rapporteur strongly encourages the Government to ensure that the bill will enable the public to have access to legislative and judicial information

5. Specific issues

(a) Minorities

112. One other issue that the Special Rapporteur examined during his mission is the freedom of opinion and expression of minorities and, in particular, their access to information.

113. The Special Rapporteur learned with concern that the Argentine media play an important role in maintaining prejudice against some minorities by showing a negative image of them. The Special Rapporteur's attention was drawn to the situation of indigenous communities,[28] illegal migrants[29] and religious minorities.

The indigenous and migrants

114. Despite the fact that the indigenous population is protected by article 75, paragraph 17, of the Constitution, the Special Rapporteur was nevertheless informed by some representatives of NGOs that in practice there is some discrimination and violence against the indigenous population. He was informed that, except for community radio, they have limited access to national and provincial news.

115. The Special Rapporteur will not be able to provide first-hand information with regard to the situation of these two communities as he did not have the opportunity during his mission to meet with them. It has been brought to the attention of the Special Rapporteur by several sources that the Argentine media sometimes, especially in the past few years, contributed to intensifying the prejudices of the Argentine population against the indigenous and migrants. In fact, the Special Rapporteur was told that the media coverage of migrants often criminalized and demonized them. For example, a recent issue of the magazine La Primera depicted on its cover an image of migrants as thieves.

Religious minorities

116. The Special Rapporteur was, however, able to collect more detailed information with regard to the situation of religious minorities and to meet with their representatives. According to data provided to the Special Rapporteur by NGOs, 88 per cent of the 36 million Argentines are Roman Catholic, 7 per cent Protestant, 1.5 per cent Muslim, 1 per cent Jewish and 2.5 per cent of other beliefs.

117. The Special Rapporteur was informed by the representatives of the Jewish, Arab and Muslim communities that there is no State discrimination policy against religious minorities. They also said that owing to lack of access to the major media outlets, the respective communities had begun to publish their own booklets and newspapers.

118. It has been affirmed to the Special Rapporteur that in some instances the media give a negative image of those communities, in particular the Arab and Muslim populations. For instance, on one of the most popular television shows, Tiempo Nuevo, the host represented Muslims holding the Koran in one hand and a rifle in the other. The Special Rapporteur would like the Arab and Muslim feelings to be respected. He has noted anti-Arab and -Muslim expressions in the media. He was informed that some media broadcast programmes in the Middle East which contained incitements to murder, including the statement by an Israeli rabbi calling for bombs to be planted to kill all Arabs.

119. The representatives of the Muslim community expressed their deep concern over the fact that despite numerous attempts they were not given the opportunity to respond to or correct such information. The representative of the Jewish community indicated that there was anti-Semitism in some sectors of the society, in particular right-wing groups. He underlined, however, that there was no State policy against Jews. With regard to access to the media, it was quite impossible to have access, so the community had its own newspapers.

120. The Special Rapporteur has been informed of steps taken by the authorities to improve the treatment of minorities, in particular the role played by the National Institute to Combat Discrimination, Xenophobia and Racism (INADI). Established in 1995 as a decentralized body within the Ministry of the Interior, its purpose is to develop national policies and practical measures to combat discrimination, to encourage and carry out initiatives aimed at disseminating the principles and legal standards relating to non-discrimination and to inform public opinion. Furthermore, INADI has a mandate to investigate matters pertaining to discrimination. It also provides free legal assistance and advice to those requiring such assistance. The President of the INADI is the Defensor del Pueblo of Buenos Aires.

121. The Special Rapporteur considers, however, that more has to be done to integrate them. He would like strongly to encourage the authorities to launch awareness campaigns aimed at rectifying negative images. It is his view that the Argentine media should help in this regard and be prevented from promoting any kind of racism and discrimination against minorities.

122. Finally, the attention of the Special Rapporteur was drawn to the situation of sexual minorities. Though discrimination against sexual minorities does not fit fully under his mandate, the Special Rapporteur is of the view that their situation deserves attention.[30]

123. He met with representatives of organizations of sexual minorities and transvestites who reported to him cases of violations of human rights because of their sexual orientation. The Special Rapporteur was concerned at the number of such cases.

124. The Special Rapporteur was informed that the provincial legislation allows police to impose detention or sanctions for infractions that do not constitute criminal offences. He has also been informed that in several provinces[31] there is a "Contravention Code" which penalizes those "who are dressed as somebody of the opposite sex" with detention for up to 15 days.

(b) Deterioration of the working conditions of media workers

125. The Special Rapporteur was impressed by the number and the dynamism of journalists' trade unions and associations aimed at promoting freedom of opinion and expression in Argentina.

126. According to the information made available to the Special Rapporteur, the right to assembly is well observed generally. The principal journalists unions are the Federación Argentina de Trabajadores de la Prensa (FATPREN), the Unión de los Trabajadores de la Prensa de Buenos Aires (UTPBA), the Asociación de Reporteros Gráficos Argentinos (ARGRA), and the Asociación de Entidades Periodisticas Argentinas (ADEPA). Some of them have representation at provincial level.

127. One issue of concern brought to the attention of the Special Rapporteur was the deteriorating working conditions of journalists and media professionals as a result of the current economic and financial crisis.

128. The Special Rapporteur has been informed of the existence of Law 12,908 relating to the status of professional journalists (Estatuto de Periodistas Profesionales) and Law 12,921 (Estatuto de Empleados Administrativos de Empresas Periódicas). Generally, the journalists and trade unions the Special Rapporteur met expressed the view that these legal instruments, if correctly applied, provide good protection for journalists. The Special Rapporteur has been informed, however, that more and more frequently the owners do not respect the provisions contained therein.

129. It has been brought to the attention of the Special Rapporteur that the ongoing 36-month recession, the longest in a century, has had an impact on daily newspaper sales which dropped by 30 per cent. Similarly, private and public advertising decreased by 11 per cent in 2000. Contractual patterns have changed. Non-permanent staff has grown from 15 per cent to 50 per cent between 1994 and 2001 and junior staff writers and radio journalists are unpaid interns and/or young journalists working under short-term contracts, which may have an impact on the quality of their work.

130. It has also been brought to the attention of the Special Rapporteur that the two largest newspapers, Clarín and La Nación, reduced their permanent staff by 30 per cent between 1997 and 2000. According to various media analysts, the main problem facing journalists is the lack of job security.

131. The Special Rapporteur believes that poor working conditions and insecure contractual status could affect their independence and also result in self-censorship, as a journalist may fear being fired if he does not follow the editorial line.

132. The Special Rapporteur strongly encourages the media companies to respect the provisions of the two Statutes mentioned above. He would like in particular to refer to article 64 of the Law 12,908 which states that the media companies which receive official advertising should comply with their social obligations to their employees.

(c) Demonstrations

133. In view of the nature of his mandate, the Special Rapporteur would like to refer also to questions related to freedom of assembly.

134. The Constitution provides for the right of assembly as well as for the right to strike. A number of non-governmental organizations communicated information to the Special Rapporteur about incidents related to demonstrations, mainly during recent weeks.

135. The Special Rapporteur was informed that because of the deteriorating economic and social situation in the country, high unemployment or underemployment has led to frequent demonstrations. Groups of unemployed and underemployed workers around the country frequently used roadblocks (piquetes) as acts of protest. Hundreds of such incidents took place in recent months. Some of these roadblocks were spontaneous actions by groups protesting against lay-offs. While most roadblocks were resolved through negotiated settlements, a number ended in a confrontation between the gendarmeria and the strikers.

136. It was reported to the Special Rapporteur that 307 demonstrations took place in the first 301 days of 2000. Several days before the arrival of the Special Rapporteur, on 17 June, two demonstrators were killed as 300 gendarmes moved in to clear a roadblock. Serious incidents involving demonstrators and gendarmes took place in the town of General Mosconi and Tartagal.

137. The Special Rapporteur is deeply concerned about the way the gendarmeria, which is a militarized police force, sometimes dispersed demonstrators with rubber bullets and tear gas. According to information provided to the Special Rapporteur, several other protestors have been killed in the course of demonstrations since the President de la Rua took office in 1999.

138. In addition to the severe repression of demonstrations, it has been brought to the attention of the Special Rapporteur that more than 2,500 legal actions have been initiated by the authorities against demonstrators, in particular trade unionists.

139. According to NGOs, academics, journalists and trade unionists, the increase in demonstrations and roadblocks, which are without precedent, highlight the urgent need for a political dialogue in the country.

140. Finally, the Special Rapporteur would like to stress, that in view of the fact that the right to freedom of assembly is an intrinsic part of the right to freedom of expression, under no circumstance should excessive force be used.

C. The state of freedom of opinion and expression in the provinces: the case of Santiago del Estero

141. During preparations leading to his mission to Argentina, the Special Rapporteur expressed the wish to visit, in addition to the Federal Capital, Buenos Aires, one of the provinces. As it was not possible for him to visit all of them owing to time constraints, he

decided to visit the Province of Santiago del Estero. The choice was guided by the fact that prior to his visit, many of the reported violations of the right to freedom of opinion and expression allegedly occurred in that province. In addition, the OAS Special Rapporteur had issued a press release expressing his concern over the state of freedom of expression in Santiago del Estero, in particular of the newspaper El Liberal.[32]

142. The Special Rapporteur would like first of all to express his gratitude to the Federal Government of Argentina for having accepted his request to extend his mission for an additional day in order to visit Santiago del Estero. He would like also to sincerely thank provincial and municipal authorities in Santiago del Estero for their assistance during his mission, as well as all the individuals and organizations that he met.

143. The Special Rapporteur visited the Province of Santiago del Estero from 29 June to 1 July 2001 in order to assess the extent of enjoyment of the right to freedom of opinion and expression. He met with the Governor of the Province and his Cabinet, the President of the provincial legislature, the Deputy Mayor of the City of Santiago del Estero and the city government, the Bishop, the provincial judiciary, the Press Association (El Circulo de la Prensa), the Council of Lawyers, the publishers and editors of El Liberal and El Nuevo Diaro, the Director of the City Theatre and representatives of non-governmental organizations.

1. General context

144. The province of Santiago del Estero is one of the poorest of the country. It has a population of about 700,000. Unemployment is high. An estimated 33 per cent of the working population is employed in the public administration. The province has its own constitution, promulgated in 1997. Article 19 recognizes the right to freedom of opinion and expression. The Special Rapporteur was also informed that there is a Defensor del Pueblo and a provincial human rights commission.

2. Principal observations and concerns

145. With regard to the print media, there are three main newspapers in Santiago del Estero: El Liberal, El Nuevo Diaro and Abril. The first is family owned and was established in 1898. It is the oldest newspaper in the northern part of Argentina. The two others were founded in 1990 and 1999, respectively. Only El Liberal is registered with the Instituto Verificador de Circulaciones, the organ responsible for estimating the number of copies printed. El Liberal's circulation is estimated at 16,000 copies.

146. There is one AM radio station (LV 11), and several FM stations (FM Panorama, FM Exclusiva, FM Espiritu, etc.). There is only one open (no subscription) air television, Canal 7.

147. The Special Rapporteur noted that the situation in Santiago del Estero was tense. There was a sharp division between the followers of the Governor of the Province and his political opponents. While it is not the responsibility of the Special Rapporteur to interfere in provincial matters, he was distressed by the conflictual situation, mainly on political grounds, as well as the large number of allegations of violations of the right to freedom of opinion and expression.

With regard to the judiciary, it was brought to his attention that its independence and, in some instances, its slowness in responding was a concern. A climate of suspicion and sometimes fear was clearly perceptible in the province.

148. According to the information provided by El Circulo de la Prensa, during the last five years some 150 allegations of violations of the right to freedom of opinion and expression were reported in the province. These cases included threats and intimidation, as well as legal actions against journalists or media.

149. With regard to threats, the Special Rapporteur was informed that several journalists from newspapers outside Santiago del Estero (La Nación and La Voz del Interior) received death threats at their respective hotels when they were in Santiago del Estero to prepare articles on the situation in that province. Furthermore, several sources brought to the Special Rapporteur's attention that the phone lines of some alleged opponents or critics of the Governor had been tapped on several occasions. The issue was raised during the meeting with the Governor, who denied the allegations. He stated that the telephone company reportedly had examined the lines and found no evidence of wire-tapping.

150. Another issue of concern is the allocation of public notices (advertising) in the print media. The Special Rapporteur noted that despite the fact that El Liberal is the largest newspaper in the province, it has received no public notices since July 2000. The Special Rapporteur is of the view that public notices must be equally distributed without regard to the editorial policy. The Special Rapporteur is concerned that the present allocation of public notices appears to be a deliberate policy aimed at financially undermining a dissent voice, particularly in view of the fact that much of the employment in the province is in the public sector and openings are advertised in the newspapers. This could therefore encourage people to read some newspapers rather than others. In this connection, the Special Rapporteur would again like to refer to article 64 of Law 12,908 which says that companies receiving official advertising should comply with their social obligations towards their employees.

151. The Special Rapporteur is also deeply concerned at the legal action initiated against El Liberal. This case is widely known both nationally and internationally. In August 2000, 40 members of the Rama Feminina, a women's organization,[33] filed a criminal defamation complaint against El Liberal, alleging that the paper had damaged the reputation of the members of the organization by reprinting an article from La Voz del Interior, a newspaper published in the neighbouring Province of Córdoba, that referred to Rama Feminina supporters as "rameras", which means prostitutes in Spanish.

152. The Special Rapporteur was informed that the plaintiff's lawyer declared that he was representing 4,000 women who filed similar complaints in groups of 40, based on article 110[34] of the Penal Code. It was brought to the attention of the Special Rapporteur that La Voz del Interior has never been sued for publishing the original article. According to the information received, the total damages could amount to 20 million pesos (US$ 20 million). On 20 October 2000, a local court ordered El Liberal to post a bond of 384,000 pesos (US$ 384,000) pending the outcome of the various defamation suits.

153. The Special Rapporteur would like to emphasize that insult and the use of inappropriate words has to be strongly condemned. People of different views and ideas must always be respected in a democratic society. The Special Rapporteur concurs that the members of the Rama Feminina, as well as their families, have genuinely been offended. A compensation is therefore required. Regardless of the genuine prejudice, the Special Rapporteur strongly believes that the damages requested by the plaintiffs are too high and will definitely financially cripple the 101-year-old newspaper.

154. The Special Rapporteur noted with appreciation the quality of the newspaper and the high level of its reporting. The working conditions at and status of the newspaper appear to be far better than at the other two newspapers. The Special Rapporteur was also impressed by the fact that El Liberal pays attention to training and also has made significant investments in printing apparatus.

155. The El Liberal issue was addressed during the meeting between the Special Rapporteur and the Governor. The Governor clearly stated that he had no power to bring an end to the suit filed by the Rama Feminina. The Special Rapporteur underlined that in his capacity of the head of the executive branch of the province, he would have to try to explore all possible ways to assist in resolving the situation which has seriously harmed the climate in the province. The management of El Liberal and their lawyers have indicated their willingness to come to a friendly settlement with the assistance of a mediator. The Special Rapporteur is of the view that if a friendly agreement cannot be settled at the provincial level, the Federal Government, in light of its regional and international obligations, should assist in resolving this case which could have nationwide repercussions. The Special Rapporteur believes that a friendly settlement of the issue should be found. He considers that the closing down of El Liberal would be a great loss not only for the owner of the newspaper but also for Santiago del Estero and for the entire country. Indeed, a democracy is mature only if dissident and critical voices can also be heard, bearing in mind the obligation to be respectful of others.

156. The Special Rapporteur was also informed of a legal action for slander and insult against the Secretary-General of the Press Association, Eduardo Enrique Peláez. It has been reported that in November 2000, the mayor of the capital of Santiago del Estero, José Luis Zavalia,[35] filed a legal action for slander against Mr. Peláez because the Voces de la Gente, the organization's official publication, reported that the municipal press office had violated article 64 of Law 12.908 by granting advertising to media outlets that did not comply with their stipulated social obligations as employers. The Special Rapporteur was furthermore informed that members of the governmental press office also filed an action in response to the article's mention of "the radicals at the municipality". According to information received by the Special Rapporteur, a judge ordered Mr. Peláez's assets of 20,000 pesos (US$ 20,000), as well as those of the Press Association valued at 300,000 pesos, to be frozen. The Special Rapporteur is distressed by the fact that the action was directed at Mr. Peláez even though he did not write the article, nor was he in charge of publishing the paper.

157. A case of censorship was brought to the attention of the Special Rapporteur. According to the information received, a play by Pablo Neruda, El Cartero de Neruda (Neruda's Postman), was banned from showing at the municipal theatre in May 2000 because it contained scenes with naked actors. It has to be mentioned that this play has been shown before in several other cities of Argentina. The Special Rapporteur met with the director of the theatre who indicated that he,

not the Governor, decided not to show the play because it contained "obscene" scenes. He added that another municipal venue was available to stage the play. The Special Rapporteur was, however, informed by several sources that the place proposed by the authorities was not appropriate and that finally the university decided to stage the production.

158. Several cases of unequal access to public information were brought to the attention of the Special Rapporteur. In this regard, he would like to refer to the case of journalist Marcela Espindola, correspondent for the news agency DyN, who, wishing to interview a provincial government minister was informed on 3 March 2000 that "the Ministry does not receive women".

159. Finally the Special Rapporteur is concerned about the information that members of the Press Association and other organizations including the Madres del Dolor and the Asociation de Lucha contra la Droga have been threatened and harassed because they had denounced the failure by the police to investigate several recent cases of killing of teenagers, and when the judicial process was finally initiated it was extremely slow.

160. Despite the legal framework (provincial constitution) which guarantees freedom of opinion and expression, the Special Rapporteur is of the view that these rights are not fully realized in the province of Santiago del Estero. He also notes with great concern that the judiciary seems to be subject to interference from the executive. The Special Rapporteur has also noted that in some cases, favouring of the ruling authorities, the judiciary works faster than in other cases. In that connection, the Special Rapporteur would like to emphasize that timely rulings should be delivered for all persons and institutions, regardless of their political opinion and ideas.

161. To conclude, the Special Rapporteur notes that despite the fact that the provincial Defensor del Pueblo has been charged by the provincial legislature with collecting information on the media, little has been done. According to information received, in light of the highly political divisions in the province, neither the Defensor del Pueblo nor the provincial human rights commission has been able to carry out their respective duties. The Special Rapporteur is particularly concerned at the fact that since its establishment, the commission has reportedly never examined a complaint despite the large number brought before it.

IV. CONCLUDING OBSERVATIONS

162. The Special Rapporteur welcomes the expressed commitment of the Government of Argentina to democracy, the rule of law and human rights, in particular to promotion and protection of the right to freedom of opinion and expression.

163. The Special Rapporteur wishes to recall that freedom of opinion and expression constitutes the basis of all the freedoms on which democracy rests. No nation can make progress if freedom of expression is not guaranteed to all its citizens and protected by the law.

164. The Special Rapporteur notes with satisfaction that the legal environment in Argentina is in accordance with international and regional standards and that Argentina has given constitutional rank to international and regional human rights instruments. Along the same lines, the Special Rapporteur has been impressed by the existence of various bodies and mechanisms made available to the inhabitants of Argentina in order to better protect their fundamental rights.

165. The Special Rapporteur considers that Argentina has free and vibrant media, in both the press and broadcast sectors. The media market is flourishing with a large number of national and provincial newspapers and magazines, as well as private television and radio. The Special Rapporteur was equally impressed by the cultural life in Argentina, in particular with regard to music, theatre and literature.

166. The Special Rapporteur can assert that the right to freedom of opinion and expression is widely respected and realized in Argentina. There is no prior censorship and the media can operate in a free and independent environment. Thus, he notes with satisfaction that there is a plurality of viewpoints and voices.

167. The Special Rapporteur welcomes the recent decision by the Government to introduce in the Congress a bill aimed at eliminating criminal defamation in the case of public figures and introducing the actual malice and neutral reporting standards. He considers that if this bill is adopted it would give to Argentina one of the best legal frameworks for press freedom in all of Latin America. In this connection, the Special Rapporteur concurs fully with the assessment made by the OAS Special Rapporteur for Freedom of Expression who considers that "it [the bill] would constitute one of the most significant advances in the area of expression and democratic progress".[36]

168. The Special Rapporteur considers that the bill on access to information will enable Argentina to comply fully with its international and regional obligations. The Special Rapporteur notes that it is indispensable that journalists should have access to information held by public authorities, granted on an equitable and impartial basis, so they can carry out their role as a watchdog in a democratic society.

169. The Special Rapporteur believes that both bills were drafted in a participatory process and urges the Government to expedite the legislative procedure.

170. The Special Rapporteur is convinced that the media in Argentina play a crucial role in the political and social life of the country, and therefore, its role should not be restricted. Television in particular has an informative, but also an educational role to play.

171. The Special Rapporteur observes that the media in general enjoy high credibility in the eyes of the public. He notes with satisfaction that the overall majority of journalists are experienced and perform their work skilfully. He also notes the high quality of the investigative journalism.

172. While noting that the number of individual cases of violations of the right to freedom of opinion and expression has decreased over the past years and that there is no official policy to target them, the Special Rapporteur remains concerned at the number of attacks, incidents of harassment and threats against journalists and human rights defenders. He urges the authorities to investigate these cases and the judiciary to deal promptly with them.

173. The Special Rapporteur is concerned at the deteriorating economic and social situation in the country. He noted that the current crisis has had an impact on the exercise of the right to freedom of opinion and expression. He is disturbed in particular by the deterioration in the working conditions of journalists in recent years.

174. The Special Rapporteur has noted that the freedom of the media, which is widely realized in Argentina, is sometimes restricted by indirect methods or means, in particular the unequal allocation of publicity spots or advertising.

175. The Special Rapporteur wishes to recall that the rights to freedom of expression and assembly are core human rights and essential in a democracy. These rights have, however, to be exercised without prejudice to the rights and liberties of others. Law enforcement officers are under double duty to protect the rights of those assembled and to guarantee that other rights are not violated in the process.

176. The Special Rapporteur regrets that minorities continue to be discriminated against. He considers that more has to be done to integrate minorities into the media. He is convinced that additional efforts should be undertaken in order to integrate religious minorities into the media by listening more closely to their problems. It is the view of the Special Rapporteur that in a multicultural and multi-religious society, more attention should be drawn to the weak than to the strong.

177. The Special Rapporteur is deeply concerned at the state of the freedom of opinion and expression in the province of Santiago del Estero. He urges the provincial authorities to find a peaceful settlement to the current crisis situation in which the Governor has used his power to withhold advertising, and thereby cripple, the newspaper El Liberal which had published articles criticizing the members of the provincial government. This particular newspaper, which has a long history of fighting hegemonism has also become the target of abuse of executive power affecting its business. This particular case needs the immediate attention of the Government. Civil society should also react effectively to undo the harm done to this well-reputed newspaper. It is suggested that some sort of mediation between the owners of the newspaper and the Governor would perhaps be a way to find a solution to the present confrontation.

178. Finally, the Special Rapporteur considers that the Argentine experience in the field of freedom of opinion and expression could be of value for other Latin American countries and that it would be useful if Argentina could build up constructive cooperation with countries facing a process of profound economic and social transition.

V. RECOMMENDATIONS

179. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations to the Government for its consideration. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

180. The Special Rapporteur strongly recommends that more talk shows and debates on rights issues be broadcast on national channels. During his meeting with the management of Canal 7 (the public multimedia holding company), the Special Rapporteur encouraged the involvement of more journalists and academics in the preparation of the content of this type of programme and to include themes such as gender inequality, children's rights and minority rights.

181. The Special Rapporteur invites the Government to keep him informed of further developments with respect to the bill on the right to access information and on the bill aimed at eliminating criminal defamation in the case of public figures. In that connection, the Special Rapporteur recalls the recommendations made in his report E/CN.4/2000/63 (para. 205) relating to the abuse of libel and defamation laws for press offences. The Special Rapporteur considers that in no event should fines be levied with the intention of limiting or eliminating opposing information and ideas.

182. The Special Rapporteur endorses the recommendations contained in the annual report for 2000 of the OAS Special Rapporteur for Freedom of Expression. He strongly supports in particular recommendations 6, which encourages States to "use the actual malice doctrine as the standard for defamation lawsuits against the press as well as the decriminalization of libel and slander laws", and 7, which "recommends that member States guarantee access to information and habeas data, both de jure and de facto, for all citizens, because both elements are essential for freedom of expression and the democratic system".

183. In that regard, the Special Rapporteur would like also to encourage the Government to take appropriate action in order that the law regulating habeas data may be approved by the Congress.

184. The Special Rapporteur strongly encourages the Government to consider ways to ensure that the process of introducing future legislation that may affect freedom of opinion and expression and media freedom is transparent and participatory.

185. The Special Rapporteur would urge the authorities to take the necessary steps to conduct in a timely, thorough and conclusive manner investigations into complaints of attacks, death threats and harassment against members of the media. He also urges that the investigations into the assassinations of the journalists Mario Bonino, Jose Luis Cabezas and Ricardo Gangene continue to their end. The Special Rapporteur recommends that the judiciary deal rapidly with the cases brought to its attention.

186. The Special Rapporteur strongly recommends to the managers of the main private media companies that, when a restructuring process has to be initiated for economic reasons, they engage in a constructive dialogue with the staff members concerned. The Special Rapporteur is in favour of the establishment, with the media companies, of committees tasked with managing funds aimed at providing training for the employees to be separated from the enterprise. The Special Rapporteur is of the view that such a mechanism may assist and help to avoid social pressure.

187. While the Special Rapporteur notes with appreciation the measures taken by Argentina to alleviate the prejudices of the majority of the population against some religious and ethnic minorities, the Special Rapporteur would encourage the Government and the NGO community to use the media to improve the image of ethnic and religious minorities in Argentina. In that connection, the Special Rapporteur recommends awareness-raising and educational measures to redress cultural stereotypes directed against some religious and ethnic minorities.

188. The Special Rapporteur is concerned about the situation in Santiago del Estero which is having a chilling effect on freedom of the press. The Special Rapporteur believes that a resolution of the current differences and an open dialogue with the opposition are essential steps in furthering the promotion and protection of human rights.

189. The Special Rapporteur endorses the recommendations made by the United Nations Human Rights Committee which examined the third periodic report of Argentina in October 2000. The Committee expressed concern over continuing attacks on human rights defenders, judges, complainants, representatives of human rights organizations and members of the media. In addition, persons who participate in peaceful demonstrations are reportedly subject to detention and penal action. The Committee recommended, inter alia, that "attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required" (CCPR/CO/70/ARG, para. 13).

190. Finally, the Special Rapporteur recommends that the technical cooperation programme initiated by the Office of the High Commissioner for Human Rights in Argentina continue and that a special focus be given to the promotion and protection of the right to freedom of opinion and expression, in particular in the provinces and for religious and ethnic minorities.

Notes

[1] General Videla was the Head of the junta from 1979 to 1981. Admiral Massera was the President of the first military junta.

[2] Judge Cavallo's ruling of 6 March 2001 was in response to a criminal complaint submitted in October 2000 by the Centre for Legal and Social Studies (CELS) concerning the disappearance of José Liborio Poblete Roa, his wife, Gertrudis Marta Hlaczik, and their daughter, Claudia Victoria, in 1978. Claudia Victoria Poblete has been found but the whereabouts of her parents remain unknown.

[3] Félix Luna, A Short History of the Argentinians, Planeta, Espejo de la Argentina, 2000, p. 208.

[4] The victims were Mario Bonino, Jose Luis Cabezas and Ricardo Gangene. Their cases are detailed in the chapter entitled "Principal characteristics of the violations against freedom of the press".

[5] In this regard, the Commission receives more petitions from Argentina than any other country: over 100 yearly.

[6] Under the amended 1994 Constitution, the President can be re-elected for a term of four years and there is no longer a legal requirement that the President be a Roman Catholic.

[7] "All the inhabitants of the Nation are entitled to the following rights, in accordance with the laws that regulate their exercise, namely: ... to publish their ideas through the press without censorship ...".

[8] In addition, the right to form federations is expressly provided for in the same Act (No. 23,551). An estimated 35 per cent of workers in Argentina belong to unions.

[9] It is estimated that 4 million Europeans arrived in Argentina during the nineteenth century, 70 per cent from Italy.

[10] Periodistas is the Argentine Association for the Defence of Independent Journalism. The NGO was formed in 1995 in "response to the threats to the press and independant journalism that jeopardized the freedom that had been attained since the restoration of the constitutional order in 1983". Its members are editors, columnists and writers. Its purpose is to "register and then follow up every hostile act, whether by the State or any other sector, that attempts to limit or impair the role that the press should play in building a mature and stable democratic system". It publishes each year a report on the state of freedom of the press in Argentina.

[11] See previous reports E/CN.4/1996/39, E/CN.4/1998/40 and E/CN.4/1999/64.

[12] On 15 November 1993, the body of Mario Bonino, a journalist and member of the Buenos Aires Press Workers Union, was found on the outskirts of Buenos Aires. Three years later, on 25 January 1997, the body of José Luis Cabezas, a photojournalist for the magazine Noticias, was found handcuffed and burned inside a car in Pinamar. On 13 May 1999, Ricardo Gangene, director of the weekly El Informador Chabutense, was killed in the city of Trelew, Chubut Province. It is believed that the three journalists were killed because of their investigative work into corrupt governmental practices.

[13] See E/CN.4/1999/64, paras. 49-51. No reply to this communication was sent to the Special Rapporteur by the Government.

[14] Mr. Gangene had published a series of articles about procurement irregularities at the Trelew Electrical Cooperative. The man accused of masterminding the crime, Osvaldo Daniel Viti, was expected to stand trial in March or April 2001, along with the assassin and an accomplice. Three other suspects, who had been detained in 1999, were freed in 2000.

[15] On 2 February 2000, the Dolores Criminal Tribunal, Buenos Aires Province, sentenced 8 of the 10 accused to life imprisonment. Three of the accused were members of the Buenos Aires police. The court also identified businessman Alfredo Yabrán as the instigator of the crime. The day after the sentencing, the provincial authorities announced the creation of an independent commission charged with investigating the "unclear aspects" that remained in the case, in particular, the role of the Buenos Aires police authorities.

[16] Before the incident, Mr. Etchecolatz was detained in connection with another case in which he is accused of child abduction and falsifying identities. Despite the existence of television footage which clearly shows the brothers Jorge and Marcelo Gristcelli to be Mr. Andrade's assailants, the Government has yet to act on the matter.

[17] Página 12 assigned Mr. Larrosa to cover the hostage crisis. The photographs that he took allegedly showed a policeman hiding material evidence, which later disappeared, in the trunk of a patrol car. In January, a police officer was detained and accused of concealing evidence and being an accessory to the robbery. And on 11 August, the investigating judge ordered another officer's arrest on the basis of Mr. Larrosa's photographs, according to local press reports.

[18] Mariano Mansilla is a lawyer and a founding member of the Comité de Acción Jurídica de Argentina - CAJ (Argentine Committee for Legal Action). He provides his services to the Central de Trabajadores Argentinos (Argentine Workers Union) and the Federación Mapuche de Argentina (Mapuche Federation of Argentina).

[19] See Report of the OAS Special Rapporteur for Freedom of Expression, 1999, Chap. III.

[20] In March 1997, President Menem won a US$ 150,000 judgement against the weekly magazine Noticias. The Court of Appeals ruled that the magazine and its editors, Jorge Fontevecchia and Héctor D'Amico, had violated the President's privacy when it published an article describing the flight of his illegitimate son and the boy's mother to Paraguay because of fears for their safety.

[21] In August 1997, a former civil servant won a US$ 50,000 judgement against Eduardo Aliverti, a radio journalist and reporter for Página 12, stemming from a story Mr. Aliverti broadcast in 1991.

[22] See OAS press release, Pren/8/99 of 16 April 1999.

[23] Periodistas claimed that the Argentine Supreme Court had violated both domestic and international law in three separate rulings on cases of alleged defamation.

[24] Principles 10: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanction in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

Principle 11: "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at the public officials, generally known as desacato laws, restrict freedom of expression and the right to information."

[25] In April 1997, for instance, Página 12 was ordered to publish a statement by a presidential aide who was angered that the paper reported that he had been recruiting Argentine mercenaries to fight in Croatia.

[26] See Report of the Office of the OAS Special Rapporteur for Freedom of Expression, 1999, page 24.

[27] In November 1998, the Autonomous Government of the City of Buenos Aires passed Law No. 104, recognizing every person's right to request information in the city government's possession.

[28] Estimates of the country's indigenous population range from 60,000 to 150,000. The largest groups are the Quechua of the north-west and the Mapuche of northern Patagonia. There are also important populations of Matacos, Tobas and others in the Chaco and in north-eastern cities such as Resistencia.

[29] The number of illegal migrants coming to Argentina has increased, according to information provided by NGOs. The majority of them are coming from neighbouring countries, in particular Peru and Bolivia. There are no official estimates of their numbers. The socio-economic conditions of the migrants are extremely precarious.

[30] The Special Rapporteur express concern at the numerous cases of torture, arbitrary arrest and detention of members of sexual minorities, who are targeted because of their sexual orientation. Concrete cases, including deaths, were brought to the attention of the Special Rapporteur.

[31] This is the case in the Province of Buenos Aires (art. 92 E of the Contravention Code), the Province of Santa Fe (art. 87) and the Province of Mendoza (art. 80). The codes of the two latter provinces provide respectively for 20 and 15 days' imprisonment.

[32] See Press Release Pren/30/00, "Special Rapporteur for Freedom of Expression condemns serious attacks and threats against two Argentine newspapers", 4 August 2000.

[33] Rama Feminina is affiliated with the Judicialist Party, the political party of the Governor. The organization is headed by his wife, who is also the Vice-Governor.

[34] Article 110 punishes with a fine of 1,000-100,000 pesos, or a prison term of one month to one year, anyone who "dishonours or discredits" anyone else.

[35] The mayor of the municipality of Santiago del Estero belongs to the Unión Cívica Radical, the political party of President de la Rua, while the Governor belongs to the Judicialist Party.

[36] See the Annual Report for 2000 of the OAS Special Rapporteur for Freedom of Expression.

Annex

LIST OF PERSONS THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

A. Buenos Aires

Funcionarios

Excmo. Sr. Fernando de la Rúa, Presidente de la República

Dr. Moline O'Connor, Vicepresidente de la Corte Suprema de Justicia

Dr. Adalberto Rodríguez Giavarini, Ministro de Relaciones Exteriores, Comercio Internacional y Culto

Dr. Jorge de la Rúa, Ministro de Justicia y Derechos Humanos

Dr. Nicolás Eduardo Becerra, Procurador General de la Nación

Embajador Leandro Despouy, Representante Especial para derechos humanos en el ámbito internacional

Embajador Albino Gómez y Dr. Daniel Larriqueta, Directorio del Sistema Nacional de Medios Públicos

Dr. Gustavo López, Interventor, Comité Federal de Radiodifusión (COMFER)

Diputado Alfredo Bravo, Presidente de la Comisión de Derechos Humanos de la Cámara de Diputados

Senador Raúl Romero Feris, Presidente de la Comisión de Libertad de Expresión de la Cámara de Senadores

Sr. Néstor Daniel Rostán, Presidente de la Comisión de Derechos y Garantías de la Cámara de Senadores

Diputado Jorge Oscar Folloni, Presidente de la Comisión de Libertad de Expresión de la Cámara de Diputados

Dr. Eduardo Mondino, Defensor del Pueblo de la Nación

Sr. Carlos Sersale di Cerisan, Ministro Plenipotenciario, Director General de Derechos Humanos

Sra. Alicia Oliveira, Defensora del Pueblo de la Ciudad de Buenos Aires

Dr. Roberto de Michele, Director de Planificación de Políticas de Transparencia, Oficina Anticorrupción, Ministerio de Justicia y Derechos Humanos

Naciones Unidas

Sr. Carmelo Angulo Barturen, Coordinador Residente de las Naciones Unidas, y personal del PNUD

Sra. Angélica Nauta Hunt, Directora del Centro de Información de las Naciones Unidas, y personal del CINU

Profesionales del sector de la información

Sr. Jorge Rouillon, Redactor/ Subdirector, Sección Cultura de La Nación

Sr. Ricardo Ancarola, Director de El Siglo

Sr. Roberto Pablo Guareschi, Secretario General de Redacción de Clarín

Sr. Saturnino Herroro Mitjans, Gerente de Asuntos Cooperativos, Grupo Clarín

Sr. Gabriel Giubellino, Redactor, Clarín;

Sr. Andrew Graham-Yooll, Buenos Aires Herald

Nik, Caricaturista, La Nación

Asociación de Entidades Periodísticas Argentinas (ADEPA)

Asociación de Periodistas

Asociación de Reporteros Gráficos Argentinos (ARGRA)

Federación Argentina de Trabajadores de la Prensa (FATPREN)

Asociación de Radios Comunitarias

Federación Internacional de Periodistas

Fundación José Luis Cabezas

Unión de los Trabajadores de la Prensa de Buenos Aires (UTPBA)

Académicos y escritores

Sr. Ernesto Sábato, escritor

Sr. Adolfo Pérez Esquivel, Premio Nobel de la Paz

Sr. Marco Aguinis, escritor

Sr. Félix Luna, historiador y periodista

Dra. Mónica Pinto, Secretaria Académica, Departamento de Derecho de la Universidad de Buenos Aires

Otras personalidades

Sra. Zelmira Mireya Emilse Regazzoli, Vicepresidenta, Comité para la Eliminación de la Discriminación contra la Mujer, de las Naciones Unidas

Sr. Gregorio Badeni, abogado

Sr. Damián Miguel Loreti, abogado

Grupos no gubernamentales (en orden alfabético)

Asociación de Lucha para la Identidad Transvestida y Transexual

Asociación Madres de la Plaza de Mayo

Asociación Madres de la Plaza de Mayo - Línea Fundadora

Central de Trabajadores Argentinos

Centro Islámico de la Républica Argentina

Centro de Estudios Legales y Sociales (CELS)

Comité de Acción Jurídica

Comunidad Judía de Argentina (AMIA)

Federación de Entidades Argentino Árabe de la Ciudad de Buenos Aires (FEARAB)

International Gay and Lesbian Human Rights Commission

Servicio Paz y Justicia

Transparencia Argentina

B. Santiago del Estero

Funcionarios

Dr. Carlos Arturo Juárez, Gobernador de Santiago del Estero, y miembros de su Gabinete

El Presidente de la Cámara de Diputados

El Presidente del Tribunal Superior de Justicia

El Adjunto del Intendente Municipal, y miembros del Departamento Ejecutivo

El Director del Teatro 25 de Mayo

Monseñor Juan Carlos Maccarone, Obispado de Santiago del Estero

Sr. Ricardo Aye, Vicepresidente de la Comisión de Educación

Sr. Daniel F. Yocca, Diputado

Profesionales del sector de la información

Sr. José Luis Castiglione, Director de El Liberal

Sr. José María Cantos, Presidente de Nuevo Diario

Sr. Eduardo Peláez, Secretario General, Sindicato de Periodistas

Grupos no gubernamentales

Asociación Madres del Dolor

Asociación Lucha contra la Droga